

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ANTHONY ULYESSES HAYES, JR.,

Plaintiff,

v.

MICHAEL J. ASTRUE,
COMMISSIONER OF SOCIAL
SECURITY ADMINISTRATION,

Defendant.

NO. CV 11-6490 JSL (FMO)

**ORDER DISMISSING ACTION WITHOUT
PREJUDICE**

Rule 4(m) of the Federal Rules of Civil Procedure requires the summons and complaint to be served on all defendants no later than 120 days after the filing of the complaint. The Complaint in this case was filed on August 15, 2011, more than 190 days ago. By Order dated August 17, 2011, plaintiff was directed to serve promptly the Summons and Complaint on defendant and file two copies of the proof of service with the Court within thirty (30) days of the filing of the Court's order. It appears from the record that plaintiff has failed to complete service as ordered or file the required proof of service.

On January 6, 2012, plaintiff was ordered to show cause ("Court's Order to Show Cause"), on or before January 23, 2012, why this action should not be dismissed for plaintiff's failure to complete service of the Summons and Complaint as required by Rule 4(m) of the Federal Rules of Civil Procedure. (See Court's Order to Show Cause at 1). Plaintiff was ordered to show cause

1 in writing by filing a declaration signed under penalty of perjury. (See id.). Plaintiff was also
 2 advised that failure to file such a declaration or to show cause as ordered would result in dismissal
 3 of this action for failure to prosecute. (See id. at 1-2). Plaintiff did not file any response to the
 4 Court's Order to Show Cause.

5 DISCUSSION

6 Rule 4(m) of the Federal Rules of Civil Procedure provides that a court, on its own initiative,
 7 "must dismiss the action without prejudice" if service is not effected within 120 days of the filing
 8 of the complaint. See also Despain v. Salt Lake Area Metro Gang Unit, 13 F.3d 1436, 1438 & n. 4
 9 (10th Cir. 1994) (Unless good cause is established as to why service cannot be made, Rule 4(j),
 10 which is now Rule 4(m), requires dismissal of action without prejudice.). In addition, a district
 11 court may dismiss an action for failure to prosecute or to comply with court orders. See Fed. R.
 12 Civ. P. 41(b); Link v. Wabash R.R., 370 U.S. 626, 629-31, 82 S.Ct. 1386, 1388-89 (1962) (sua
 13 sponte authority to dismiss for failure to prosecute necessary to avoid undue delay in disposing
 14 of cases and congestion in court calendars); Ferdik v. Bonzelet, 963 F.2d 1258, 1260 (9th Cir.),
 15 cert. denied, 506 U.S. 915, 113 S.Ct. 321 (1992) (district court may dismiss action for failure to
 16 comply with any court order). Dismissal, however, is a severe penalty and should be imposed
 17 only after consideration of the relevant factors in favor of and against this extreme remedy. See
 18 Thompson v. Hous. Auth., 782 F.2d 829, 831 (9th Cir. 1992, as amended May 22, 1992) (per
 19 curiam), cert. denied, 479 U.S. 829, 107 S.Ct. 112 (1986); cf. Efaw v. Williams, 473 F.3d 1038,
 20 1041 (9th Cir. 2007) (finding an abuse of discretion in allowing defendant to be served more than
 21 seven years after plaintiff filed his amended complaint without district court considering any
 22 relevant factors in favor of dismissal). These factors include: "(1) the public's interest in
 23 expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of
 24 prejudice to the defendants; (4) the public policy favoring disposition of cases on their merits; and
 25 (5) the availability of less drastic alternatives." Ferdik, 963 F.2d at 1260-61 (internal quotation
 26 marks and citation omitted); accord Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002), cert.
 27 denied, 538 U.S. 909, 123 S.Ct. 1481 (2003); Thompson, 782 F.2d at 831; Henderson v. Duncan,
 28 779 F.2d 1421, 1423 (9th Cir. 1986).

1 Here, the Magistrate Judge specifically advised plaintiff that if he did not file a response to
2 the Court's Order to Show Cause by January 23, 2012, his action might be dismissed for lack of
3 prosecution. (See Court's Order to Show Cause at 1-2). In addition, plaintiff's failure to file a
4 response to the Court's Order to Show Cause means that the Court has no knowledge as to
5 whether (or when) the Complaint was served on defendant. Nor does the Court have any basis
6 to determine whether good cause exists for not serving defendant. See Despain, 13 F.3d at 1438
7 & n. 4. This action cannot move toward disposition if the Complaint has not been served. In
8 short, pursuant to Rules 4(m) and 41(b), and the Court's inherent power to achieve the orderly
9 and expeditious disposition of cases, see Link, 370 U.S. at 629-31, 82 S.Ct. at 1388-89, and in
10 light of the factors outlined in Ferdik, Pagtalunan, Thompson, and Henderson, dismissal of this
11 action is appropriate for plaintiff's failure to effect service and to comply with the Court's Order of
12 August 17, 2011, and the Court's Order to Show Cause.

13 Based on the foregoing, IT IS ORDERED THAT the above-captioned action is **dismissed**
14 **without prejudice** for failure to effect service and comply with the Court's Orders.

15 DATED: 2/27, 2012.

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18 J. SPENCER LETTS
19 SENIOR UNITED STATES DISTRICT JUDGE
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